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In The

Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, ET AL.,

Respondents.

On Writ Of Certiorari Before Judgment To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF THE AMERICAN SOCIOLOGICAL ASSOCIATION, ET AL., AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

		Page
I.	STATEMENT OF INTEREST	1
II.	SUMMARY OF ARGUMENT	2
III.	ARGUMENT	5
	A. Universities Have a Compelling Interest in Considering the Life Experience of Growing Up Black, Latino, or Native American in Making Admissions Decisions	5
	1. Residential Segregation	5
	2. School Segregation	7
	3. Economic Disadvantage	11
	4. Stigma	11
	5. The Relevance of Race-Based Life Experiences to University Admissions	14
	a. Potential to Benefit from the Educational Experience	14
	b. Contributions to the Educational Experience	20
	c. Contributions to Society	22
	B. Considering Race in University Admissions is Narrowly Tailored When Race is One of Many Life Experiences Considered in Assessing Individual Applicants	25
IV.	CONCLUSION	30

TABLE OF AUTHORITIES

Page

CASES

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Page

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Page

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Page

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I. STATEMENT OF INTEREST[1]

Over the past fifty years, sociologists and other social scientists have produced an extensive body of scholarship demonstrating that race and ethnicity profoundly affect both the life experiences of individuals and the way individuals are treated within society. Amici offer their expertise to aid the Court in determining whether the admissions systems challenged in these cases are narrowly tailored to serve a compelling state interest.[2]

The American Sociological Association (ASA) is the major professional association of sociologists in the United States. ASA has more than 13,000 members, including most sociologists holding doctoral degrees from accredited universities.[3]

The Law and Society Association is a professional association of over 1,500 scholars in the social sciences,

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[1] Written consent to the filing of this brief has been obtained from the parties in accordance with Supreme Court Rule 37.3(a). Copies of the consent letters have been filed with the Clerk. Pursuant to Supreme Court Rule 37.6, the amici state that this brief was not authored in whole or part by counsel for any party and that no party or entity, other than the amici and their counsel, made any monetary contribution to its preparation or submission.

[2] To avoid burdening the Court, amici have submitted this brief solely in *Grutter v. Bollinger*. The social science evidence discussed here, however, is equally relevant to the admissions systems challenged in *Gratz v. Bollinger*, No. 02-516.

[3] Amici thank Barbara Reskin, S. Frank Miyamoto Professor of Sociology at the University of Washington and immediate past President of the American Sociological Association, for serving as the principal compiler of the social science data presented in this brief and for her substantial assistance in authoring the brief.

humanities, and law who study the place of law in social, political, economic, and cultural life.

The Society for the Study of Social Problems is an interdisciplinary organization of about 1,500 scholars, practitioners, and students interested in the study of social problems.

The Association of Black Sociologists is a national, professional organization of sociologists and social scientists, founded by people of African descent.

Sociologists for Women in Society is an international organization of almost 1,000 social scientists and researchers who study the position of women within society.

II. SUMMARY OF ARGUMENT

In 1954, a unanimous Supreme Court recognized that racial segregation "affects the hearts and minds" of children "in a way unlikely ever to be undone." *Brown v. Board of Education*, 347 U.S. 483, 494 (1954). Fifty years later, the promise of *Brown* remains unfulfilled: race still shapes the lives of our children, and our cities and schools continue to be segregated to an extraordinary degree. Blacks living in Detroit, New York, and Chicago today are almost as segregated from whites as were blacks living in South Africa under apartheid. More than seventy percent of black children in the United States attend schools that are majority nonwhite. For Latino children, segregation is also pronounced: seventy-six percent attend schools that are majority nonwhite. These segregated schools are generally inferior in staffing, resources, and programs to predominantly white schools in similar neighborhoods.

School segregation is firmly rooted in residential segregation emanating from racial prejudice. Despite four decades of civil rights legislation, studies by the Department of Housing and Urban Development show that black and Latino renters and buyers face race discrimination about half the time they visit real estate or rental offices to inquire about advertised housing (Turner *et al.* 2002:8-1). In social surveys, employers openly acknowledge their reluctance to hire people of color and recount the tactics they use to discourage minority applicants. Well-designed experiments demonstrate that almost all Americans automatically respond negatively toward people of color.

Race shapes every experience of minority children, from where they live and the schools they attend to the attitudes they encounter in classrooms, on the streets, at work, and in stores. Their everyday experiences are affected not only by their economic circumstances and other concomitants of race, but by race itself. The life experience of growing up nonwhite in America renders other fundamental life experiences, such as living in poverty, qualitatively different for minorities and whites. Moreover, minority children learn that they are treated differently because of their race.

Because growing up black, Latino, or Native American in the United States is a defining life experience, universities have a compelling interest in considering race when selecting students.[4] Universities seek students who will

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[4] The University of Michigan considered only students from these three racial/ethnic groups in its affirmative action plan, so we focus on these groups as well. Other racial minorities, such as Asian Americans, do not currently suffer from the degree of segregation and social

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benefit most from the educational experience, who will add to that experience through their individual talents and diverse perspectives, and who will build upon their education to contribute significantly to society after graduation. Given the pervasive effects of growing up nonwhite, universities cannot accurately assess a candidate's potential to contribute to these goals without considering race. Research has established that considering race among many other factors produces graduates of all races who become leaders in law, medicine, science, and public life. Declaring students' race out of bounds in admissions decisions would deny admissions officers crucial information to contextualize other life experiences and accurately measure academic performance.

When universities consider race in concert with other life experiences and weigh those experiences individually for each applicant, attention to race is narrowly tailored. Unlike approaches that would automatically admit students from impoverished backgrounds or from the top percentage of every high school class, an individualized examination of files considers race exactly where it matters, as an individual's life experience that transcends most other experiences.

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disadvantage in education that blacks, Latinos, and Native Americans experience (Massey and Denton 1987). As we argue below, however, race must always be considered in the context of other life experiences. In some parts of the country, universities may find the experiences of some Asian American students, particularly recent immigrants, relevant to their admissions process. The approach we outline here, focusing on an individualized consideration of race within the context of an applicant's other life experiences, would not preclude that consideration.

III. ARGUMENT

A. Universities Have a Compelling Interest in Considering the Life Experience of Growing Up Black, Latino, or Native American in Making Admissions Decisions

Social scientists agree that race and gender are overriding aspects of social identity because of the profound way in which they cut across every other identity, shaping our life experiences and how others view us (Brewer and Liu 1989; Committee on the Status of Black Americans 1989; Loury 2002). The long history of racial discrimination in the United States, amplified by contemporary forms of discrimination, still molds the lives of nonwhite children. The life experience of growing up black, Latino, or Native American today alters the impact of all factors that universities consider in admissions. To evaluate applicants fully and fairly and achieve their institutional goals, universities have a compelling interest in taking this experience into account.

We summarize below careful, comprehensive research demonstrating the fundamental ways in which race shapes life experience. We then explain how this experience is crucial to a university's assessment of individual candidates for admission.

1. Residential Segregation

The landscape of America remains indisputably segregated by race. Social scientists use the "segregation index" to assess the degree of segregation, ranging from 0 for full integration to 100 for complete segregation. Values above 60 reflect high levels of segregation. In 2000, the

average black-white segregation index in U.S. metropolitan areas was 65; in the Northeast and Midwest it was 74 (Iceland *et al.* 2002:64). Detroit, the most segregated city in the United States, had a black-white segregation index of 85, followed by Milwaukee (82), New York (81), and Chicago (80). *Id.*[5] These levels approach the degree of black-white segregation in South Africa under apartheid (Christopher 1992:573). No other group in U.S. history has experienced such persistently high levels of segregation.

Latinos also have a long history of segregation from whites (Grebler *et al.* 1970:271-90). Hispanics who identify themselves on the Census as black or racially mixed have segregation indices well above 60, while the index for Hispanics who identify as white is in the low to moderate range (Denton and Massey 1989:803). The same is true of Native Americans, although the 35 to 45 percent who live on or near reservations are extremely segregated from whites (Snipp 1992).

Racism is the driving force in residential segregation. Almost all blacks would prefer to live in integrated neighborhoods; those blacks who express a preference for all-black neighborhoods do so because they believe they would be unwelcome in integrated neighborhoods (Krysan and Farley 2002:953). In general, they are right. Although many whites would accept a few blacks in their neighborhood, all nonblack groups view blacks as the least desirable potential neighbors (Charles 2003:18). Audit studies

[5] Affluent blacks are as segregated from whites as poor blacks are (Massey and Denton 1988:613). Indeed, as racial segregation extends into the suburbs, affluent blacks typically are more segregated from whites than are the poorest Latinos (Massey and Fischer 1999:319).

demonstrate that blacks consistently encounter discrimination in real estate rentals, sales, and mortgage approvals (Turner *et al.* 2002:8-1 to 8-3). Levels of housing discrimination against Latinos increase with the darkness of their skin, underscoring the racial nature of this bias (Yinger 1995:179). Residential segregation has been further aggravated by deliberate acts of racial avoidance, occasional violence against minorities, local zoning decisions, and the isolation of public housing (Massey and Denton 1993:83-114).

In many parts of the country, residential segregation increased during the 1990s, concentrating blacks, Latinos, and Native Americans in dangerous neighborhoods with inferior schools, poor municipal services, and longer commutes to high paying jobs (Massey and Denton 1993:148-85). Whites' avoidance of these neighborhoods lowers property values, reducing the ability of these groups to accumulate wealth in real property.

2. School Segregation

Racial segregation of minority school children is on the rise. In 1968, 77 percent of black students attended majority nonwhite schools. Judicially enforced desegregation lowered that percentage to 62 percent by 1980. During the last 20 years, rising residential segregation and the elimination of mechanisms designed to integrate schools have reversed these gains. By 1999, the percentage of black students in segregated schools had rebounded to 70 percent (Orfield 2001:32). The segregation of Latino children from white children has climbed even more precipitously. Fifty-five percent of Latino children attended predominantly nonwhite schools in 1969; by 1999,

the figure was 75 percent. Over one-third of Latino children attend schools that are more than 90 percent minority (Orfield 2001:Table 9). In fact, Latino children in California are more likely to attend hyper-segregated schools than are black children in the Deep South (Orfield 2001:Tables 15, 19).

School segregation shortchanges minority children in myriad ways. According to carefully controlled longitudinal studies, majority white schools enhance the academic achievement of all students (Hallinan 1998:741-42). In one controlled study, black students who moved to predominantly white neighborhoods were more likely to take college prep courses in high school, to attend college, and to select a four-year college than were comparable students who remained in majority black neighborhoods (Rubinowitz and Rosenbaum 2000).

Residential segregation assigns black, Latino, and Native American children to poorer quality schools than those schools attended by white children of similar economic backgrounds (Yinger 1995:143-45; Ladd *et al.* 1999:154; Orfield 2001:10, 15). Middle class status does not mitigate school segregation for these nonwhite children because the middle class neighborhoods that are open to them often are adjacent to poor neighborhoods and share the same schools (Massey *et al.* 1987:42).

The schools children attend affect what and how much they learn. Contrary to some early studies, contemporary research suggests that financial resources affect physical facilities, teaching materials and technology, teacher quality, class size, curriculum, and access to motivated fellow students, factors which in turn affect students' learning and test performance (Card and Krueger 1996,

1998; Jencks and Phillips 1998:12; Krueger and Whitmore 2000; Ladd and Hansen 1999:140-47; Ehrenberg *et al.* 2001).

In inner-city predominantly minority high schools, the difficulty of attracting good teachers and the conditions of the surrounding neighborhood often restrict learning. As an ethnographic study of two all minority New York schools found, "the neighborhood problems of poverty, drug use, and violence did not stop at the school doors; in fact, these problems were more visible at the schools than in the surrounding neighborhoods" (Waters 1999:257-58). Almost every day students had to walk past drug dealers to enter their schools, and violence, often involving weapons, was common (*Id.* 261-64). According to a 1994 *New York Times* poll, black teenagers were more than twice as likely as white teenagers (70 percent versus 31 percent) to know someone who had been shot during the last five years (Chira 1994:16).

The least proficient teachers – those with the least experience, least education, and weakest credentials – are assigned to the least desirable schools, which are often in minority neighborhoods (Betts *et al.* 2000:19; Shields and Esch 2002). Some minority classrooms lack permanent teachers, and even substitutes can be in short supply. In May 1989, for example, almost 18,000 mostly minority Chicago elementary school children lacked teachers on Mondays and Fridays (Kozol 1991:53-54). These children would have been among the applicants to universities in the late 1990s when the petitioners challenged affirmative action.

Even in integrated schools, minority children suffer disadvantages. Careful research shows that teachers have lower expectations for black students than white students

of equal ability. They also tend to treat white students more positively (Casteel 1998:115; R. Ferguson 1998:313; A. Ferguson 2000:220-22). In an experiment in which teachers gave performance feedback to students they could not see, the teachers gave briefer feedback after mistakes to students they believed to be black, provided those students less positive feedback after correct responses, and offered less coaching than they did for students whom they believed to be white (R. Ferguson 1998:294).

In schools with different curriculum tracks, minority children are concentrated in low achievement tracks and underrepresented in programs for the gifted. Both the quantity and quality of instruction in lower academic tracks is decidedly inferior to that in higher tracks (Heubert and Hauser 1999:103-05; Lucas 1999:49; Oakes *et al.* 1992:81-83). Lacking challenging curriculum and high expectations, students in low tracks do worse than equally prepared students in nontracked systems (Vanfossen *et al.* 1987). Low track students also are less attractive to college admissions officers than equally capable upper track students (Hallinan 1996). Tracking thus depresses overall achievements and opportunities of minority students even when they attend integrated schools.

When they reach high school, minority students are less likely than white students to have access to advanced placement courses. Only 43 percent of high schools in poor and minority neighborhoods offer advanced placement courses, whereas such courses are virtually universal in suburban, predominantly white schools (Werkema 2002:17; Nieves 1999).

3. Economic Disadvantage

Black and Hispanic families have lower household incomes than white families,[6] and the race difference in accumulated wealth is even greater (Oliver and Shapiro 1995). These differences reduce minority children's access to tutoring, special classes, home computers, equipment for music and sports, enriching summer activities, and foreign travel. Black, Latino and Native American students often cannot afford the cultural experiences and enrichment activities that selective colleges increasingly demand. And test preparation classes, which boost students' scores on standardized tests at a cost of several thousand dollars, are unavailable to many minority students (Nettles *et al.* 1998:106).

4. Stigma

Children learn early in their lives that being nonwhite is stigmatizing, a fact that social scientists have repeatedly documented. Children of color experience more racially-based negative interactions with both teachers and peers than do white children. Qualitative research shows that very young children use racial terms to describe themselves and others and to decide with whom to play (Van Ausdale and Feagin 2001). For example, when a preschool teacher asked a three-year-old student why she was moving her cot, the child pointed to a black child on a nearby cot and explained, "Niggers are stinky. I can't sleep

[6] The 2001 median household income was $44,417 for non-Hispanic white families, $33,565 for Hispanic families, and $29,470 for African American families (U.S. Bureau of the Census 2002).

next to one" (Van Ausdale and Feagin 2001:1). Another study described how a nine-year-old black child told her mother that her teacher said, "Black people were born of sin, let's pray for the black people." The little girl added: "I just wish I was white" (Feagin 2000: 28-29). Similarly, an affluent black television news manager recounted his young son's experience with race: "Some of the [white] kids make fun of him because his nose is big . . . . He wanted to know how come we had to have a nose like that and why was this happening" (Feagin and Sikes 1994:88; Lewis 2003). Black students are also targeted for harsher disciplinary control and punishment (Skiba 2001; Lewis 2003).

These experiences continue during the teen years, when black and Latino students are more likely than whites to be questioned by shopkeepers, taunted by their classmates, stopped by the police, and subjected to racial slurs (Lewis 2003:36; Newport 2001; Parker 2002). In public establishments and on the street, blacks of all social classes are targets of negative treatment, including taunts, threats, and poor service in restaurants or retail stores (Feagin 1991:106-114; Eberhardt and Fiske 1994:211-12).

The prevalence of race discrimination in other spheres reinforces this message. In audit studies involving more than 2,000 matched pairs of job applicants, employers favored whites over blacks or Latinos with comparable credentials in invitations to interview, job offers, compensation, job assignments, and information about unadvertised opportunities (Fix *et al.* 1993; Kenney and Wissoker 1994). A carefully controlled study found that persons with white-sounding names who answered classified ads were 50 percent more likely to get calls from employers than persons with black-sounding names (Bertrand and

Mullainathan 2002). Audit studies have also documented that some employment agencies note race in the files of black applicants, steering them away from desirable and lucrative positions. In surveys, moreover, employers openly express an aversion to people of color and describe the tactics they use to prevent minorities from applying for jobs (Kennelly 1999:177; Wilson 1996:Chapter 5; Moss and Tilly 1996:265). Consistent with these studies, 60 percent of African Americans reported racial barriers in their workplace in the previous year (Bobo and Suh 2000:Table 14.1), and in a 1997 Gallup survey, one in five blacks reported workplace discrimination during the past month alone (Gallup News Service 1997).

Racial stigmatization is pervasive in our society. When minorities go to a restaurant, ask the police for help, or enter a public building – activities most whites take for granted – they risk being ignored or questioned (Anderson 2002:1541; Loury 2002). Even Americans who consciously reject racist attitudes display an automatic, unconscious tendency to connect blacks with negative attributes, as over one million individuals have learned through the simple stereotyping test at https://implicit.harvard.edu/implicit/ (Greenwald and Banaji 1995).[7]

[7] As Fischer et al. (1996:183) have pointed out, even if only one in eight whites express prejudice, that still leaves one hostile white for every black in America – a ratio that ensures that blacks will encounter racism regularly. Race is also a central experience for whites in America, but the benefits whiteness confers tend to be invisible to them (DiTomaso 2000).

5. The Relevance of Race-Based Life Experiences to University Admissions

Universities consider a wide range of life experiences, skills, and achievements when evaluating applicants. In addition to grades and test scores, colleges consider extracurricular activities, athletic ability, leadership positions, work experience, geographic background, and "legacy" status. Schools weigh these criteria because they are essential for evaluating each applicant's potential to: (1) benefit from the educational experience on campus; (2) enrich others' learning; and (3) contribute to the community after graduation. Education is not an end in itself. It is the principal path through which individuals can advance in our society (Featherman and Hauser 1978:Chapter 5). Equally important, institutions of higher education, especially public ones, are responsible for producing individuals to serve as leaders in business, science, law, medicine, the arts, politics, and every other field.

Universities have a compelling interest in considering the distinctive life experiences of minority applicants along with their other experiences, because race shapes the meaning of those other experiences.

a. Potential to Benefit from the Educational Experience.

Grades, courses, and standardized test scores are important components in universities' assessment of each student's potential to benefit from higher education. Because a student's race influences these factors, it must be considered when assessing them.

School quality affects students' performance on the standardized tests used in college admissions. The SAT II or "achievement" tests required by most colleges test students' mastery of high school subjects. A recent National Academy of Sciences panel, chaired by the distinguished sociologist Robert Hauser, stressed that achievement tests of this nature focus on acquired knowledge (Heubert and Hauser 1999). Scores on these tests reflect students' exposure to the material – i.e., their opportunity to learn – as well as their success in mastering the subject. (Sorensen and Hallinan 1977; Heubert and Hauser 1999:79). Predominantly white schools, with their more qualified teachers and better learning tools, teach students more academic content than predominantly minority schools, thus enhancing the performance of white students on achievement tests.

Even tests that the public views as "aptitude" tests, such as the SAT I or LSAT, measure developed skills rather than innate ability (Jencks 1998:58-66). Psychologists have long recognized that they can "only measure people's developed capacity for intelligent behavior, not their innate potential" (*id.* 61). Developed capacity, whatever the measure, depends in part on the opportunities test-takers have been given to develop their skills. In predominantly minority schools and low achievement tracks at integrated schools, black, Latino, and Native American students lack white students' expanded opportunities to learn.[8]

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[8] Jencks (1998:65) notes that designers of the Scholastic Aptitude Test imagined that it measured aptitude rather than learned skills because "[t]he verbal test required skills that voracious readers could

(Continued on following page)

Stanford psychologist Claude Steele and his colleagues, moreover, have demonstrated a particularly serious threat to the performance of black, Latino, and Native American students on standardized tests. Steele and other researchers have shown that individuals perform poorly on standardized tests when they belong to a group that is negatively stereotyped on the tested aptitude. This phenomenon, called "stereotype threat," artificially depresses standardized-test performance among highly motivated students (e.g., Steele and Aronson 1995; Steele 1997; Spencer *et al.* 1999).

In one series of telling experiments, researchers gave randomly selected Stanford undergraduates difficult items from the Graduate Record Examination. When researchers asked the students to indicate their race on a questionnaire – thereby making students conscious of their race in the testing situation – or described the test as a measure of ability, black students scored significantly lower than whites. But when the researchers omitted

acquire at home, even if their school never asked them to read anything more complex than *Dick and Jane*." The children assigned only *Dick and Jane* at school, however, surely must be seriously disadvantaged in these tests. *See also* Kozol (1991:150) (quoting a teacher in an all-minority school, who stated, "when they take the SAT's, they're at that extra disadvantage. They've been given less but will be judged by the same tests.").

Other factors depress the performance of minority children on standardized tests. Because of financial pressures or lack of counseling, minority students are far less likely than white students to take test preparation courses (Nettles *et al.* 1998). *See Grutter v. Bollinger*, 137 F. Supp. 2d 821, 860-61, 868 (E.D. Mich. 2001). For these reasons and others, biases in high stakes tests (including both standardized admissions tests and tests given by educational institutions) disadvantage minorities (Lucas 2001).

references to race and described the test as "psychological research," the black and white students' scores were statistically indistinguishable (Steele and Aronson 1998).

Stereotype threat impairs the performance of any group whose abilities are negatively stereotyped. When researchers told accomplished mathematics students that women usually do worse in math than men, female students performed poorly compared to men. But when researchers told students that the sexes did equally well, the sexes' average scores did not differ (Spencer *et al.* 1999). Similarly, when white men were told that whites did worse than Asians, white men did more poorly (Aronson *et al.* 1999).[9]

Researchers have shown that in every part of the world, members of lower caste groups average lower scores on standardized tests than do members of the majority group (Fischer *et al.* 1996:192-94). Early in the twentieth century, the children of Polish Jewish immigrants did more poorly in school and scored lower on intelligence tests than other Americans, a difference that has long since vanished (Lieberson 1980:Table 8.12). While South Africa was governed by the English, Afrikaaner children did substantially worse on standardized tests, but after Afrikaaners came to power, the difference disappeared (Fischer *et al.* 1996:193). Test performance is thus linked,

[9] The pervasiveness of stereotype threat is further illustrated by a study in which two groups of varsity athletes were tested on a miniature golf course. In the group that was told that miniature golf was a test of athletic ability, the black athletes got better scores; in the group that was told miniature golf was a test of athletic intelligence, the white athletes did better (Stone *et al.* 1999).

not just to individual ability or knowledge, but to the individual's experience as a member of a low status group within a society.[10] As societies find ways to integrate disfavored groups, these performance differences disappear, just as they did for American Jews, Italians, and other immigrant groups (Lieberson 1980:Table 7.1; Fischer *et al.* 1996:194).[11]

Black, Latino, and Native American students suffer further in university admissions because the lack of advanced courses at their schools directly lowers their grade point averages, the appeal of their transcripts, and the reputation of their schools. When calculating grade point averages, many schools award extra points for advanced placement courses. Minority students who attend schools without these courses lose that opportunity to enhance their GPA's. In 1998, for example, the mean grade point average for students admitted to the University of California at Berkeley was 4.27, an average achievable primarily through AP course grades. That year, Berkeley denied admission to 750 black, Latino, and Filipino students with "perfect" grade point averages of

[10] Researchers have even demonstrated this phenomenon with artificially created status distinctions. In one study, researchers conditioned students to believe that left-handed individuals were inferior to right-handed ones. Even though the students were exposed to this conditioning for only 15 minutes, the left-handed participants scored significantly lower than their right-handed classmates on a standard test of mental ability (Lovaglia *et al.* 1998).

[11] Stereotype threat also affects most of the high-stakes tests administered within universities. This helps to explain the moderate correlation, for both white and minority students, between standardized test scores and college and professional school grades (Steele and Aronson 1998:403).

4.00, an average many of those students could not have improved at their schools (Nieves 1999). Admissions officers also favor students who attend high resource schools. The number of AP courses offered by a school, and the proportion of its graduates who attend college, are common measures that disadvantage students from predominantly minority schools (Stevens 2002). The University of Michigan, for example, awarded undergraduate applicants up to 80 points for their high school grade point average and up to 10 points for school quality. On both of these measures, black, Latino, and Native American students suffered compared to whites.

These minority students incur race-based disadvantages even when they attend integrated schools. Stereotype threat constrains many nonwhite students from participating in class or seeking help from their teachers and classmates. Black, Latino, and Native American students are also more likely to be relegated to lower academic tracks in integrated schools, reducing their appeal to colleges (Hallinan 1996). And at many high schools and colleges, minority students suffer from a negative racial climate that adversely affects their academic performance by creating self doubt, alienation, and discouragement (Allen and Solorzano 2000:65).[12] These experiences create a "sense of inferiority" rooted in race that "affects the motivation . . . to learn" in the same ways that state-mandated segregation once did. *Brown v. Board*

[12] These negative pressures are exacerbated when the percentage of minority students is small. Considerable research demonstrates that numerical "tokens" are subject to stereotyping and performance pressure (Kanter 1977; Allen and Solorzano 2000).

of Education, 347 U.S. 483, 494 (1954) (quoting the lower court opinion).

Because their race can depress the "objective" credentials of black, Latino, and Native American students, universities must consider race together with other experiences in order to evaluate accurately the potential of each student.[13] At the same time, the life experiences of many minority students predict a special aptitude to capitalize upon higher education. Minority students of all economic classes often live in two worlds, a predominantly white "outside" world in which they feel undervalued and out of place and a mostly minority world at home in which they are personally valued but isolated from the mainstream culture. Dealing with these two worlds, as well as with the challenges of both subtle and overt acts of racism, fosters intellectual sophistication, good coping skills, persistence, and an ability to interact with others that standardized tests and classroom grades do not measure (Fischer *et al.* 1996:187).

b. Contributions to the Educational Experience.

Higher education is more than lectures, lab exercises, and reading lists. The highest quality education is achieved through interaction among students and faculty.

[13] As Justice Powell recognized in *Regents of the University of California v. Bakke*, "[t]o the extent that race and ethnic background [are] considered only to the extent of curing established inaccuracies in predicting academic performance, it might be argued that there is no 'preference' at all." 438 U.S. 265, 306 (1978) (Powell, J., announcing the judgment of the Court).

Each student has the potential to enhance the educational experience for others, and universities have a compelling interest in identifying applicants who will contribute the most to that mix. It is precisely because of the centrality of race in Americans' experience that universities can enrich everyone's education through diversity.

Because our neighborhoods and secondary schools are so highly segregated, most American students, especially white ones, reach college without sustained contact with people of other races. This isolation is increasingly dangerous in a nation that is becoming more racially diverse and a world already composed primarily of people of color. Aware of these realities, many employers – including the United States military – stress the need for university graduates to understand people of other races, to interact comfortably with them, and to value their perspectives. This essential learning cannot occur on segregated campuses.

Almost all whites who graduated from Michigan's law school between 1990 and 1995 reported that the school's racial and ethnic diversity contributed positively to their educational experience (Lempert *et al.* 2000). It is difficult for law students to develop a sophisticated understanding of such legal issues as racial profiling, desegregation orders, immigration rules, and tribal sovereignty without hearing the perspectives of students from different racial and ethnic backgrounds (Moran 2000:2257-72). Similarly, undergraduates develop different perspectives on economics, history, and literature when they interact with classmates from different races and cultures. Just as our legal system depends upon the presentation of opposing viewpoints to resolve contested questions, our classrooms depend upon the presence of richly diverse backgrounds to

illuminate problems and advance the learning of all students.

Scholarly research confirms the value of this diversity. Based on a careful review of high quality research studies, Hallinan (1998:753) concluded that "racial and ethnic diversity on college campuses promotes learning" and that "students of all racial and ethnic groups tend to benefit" from that experience when the institution actively promotes diversity. Equally important, racially diverse campuses and classrooms reduce racism and prejudice, a vital contribution to every student's education and to society as a whole. A recent meta-analysis of well executed studies confirmed that face-to-face interaction between members of distinguishable groups reduces each group's b[illegible]es toward the other. The beneficial effects of this contact also carry forward to other contexts (Pettigrew and Tropp 2000:109; Hallinan 1998:753).[14]

c. Contributions to Society.

In addition to selecting students who will benefit from their educational experience on campus and contribute to that experience, universities have a particularly compelling interest in choosing students who will contribute significantly to society after graduation. This mission is

[14] For citizens who do not attend college, the military often provides a first experience with racial diversity. According to a recent survey of 3,000 soldiers in the U.S. Army, one quarter of the blacks and 38 percent of the whites agreed that they got along better with members of other races after joining the army (Moskos and Butler 1996:108). Military experts agree that the United States service academies have improved since becoming more diverse (Hunt 2003).

especially important for public universities, which use public resources to educate their students.

Grades and test scores are not the best predictors of the applicants who will contribute most to society after graduation. A comprehensive study of the University of Michigan's law school graduates showed that college grades and LSAT scores bore *no* relationship to post-graduation earnings, career satisfaction, or service to the community (Lempert *et al.* 2000). Similarly, a study of more than 80,000 graduates of 28 highly selective undergraduate institutions found no relationship between SAT scores or class rank and civic participation (Bowen and Bok 1998:165). SAT scores and high school grades also had little power to predict later earnings, which were more closely linked to college selectivity, college major, and college grades (Bowen and Bok 1998:133-35, 395-98). Thus, whether "social contributions" are measured in terms of a graduate's career achievements or civic participation, pre-admission grades and test scores are poor predictors of success.

Aware of this difficulty, universities use other factors besides test scores to identify future leaders among their applicants. Experience now shows that race, when combined with other experiences, is an important factor in identifying graduates who will successfully contribute to society. Minority graduates of institutions that consider race in the admissions process match their white classmates in income, career satisfaction, and other measures of job success, while outperforming them in community service, pro bono work, and public leadership (Bowen and Bok 1998; Lempert *et al.* 2000; Davidson and Lewis 1997). In their study of students admitted in 1976 to 28 selective colleges, all of which considered race as part of their

admissions process, Bowen and Bok (1998:168) found that "[o]ther things being equal, black . . . [graduates] were much more likely than their white classmates to have taken on leadership positions in virtually every type of civic endeavor." Similarly, black graduates of these colleges were more likely than white graduates to participate in politics and assume leadership roles in that field (*id.* 173-74).

Considering the racial context in which applicants are raised also helps universities identify students who will serve minority communities. Analyses by Lempert *et al.* (2000) demonstrate that every racial and ethnic group, including whites, disproportionately serves members of its own race. These relationships do not mean that every black lawyer will or should serve black clients or that every Latino doctor will or should treat Latino patients. The correlations demonstrate, however, that because of the pervasive influence race exerts on individuals' lives, the race of professionals affects the provision of services to minority communities.

Perhaps most important, racially diverse graduates of colleges and graduate schools benefit society by carrying integration forward into businesses and professions, not simply because there will be more minorities working in these arenas, but because employees of all races will have had the experience of education in a diverse setting.

B. Considering Race in University Admissions is Narrowly Tailored When Race is One of Many Life Experiences Considered in Assessing Individual Applicants

In well-designed affirmative action plans, universities consider race as one of many life experiences that illuminate the potential of an individual applicant.[15] Choosing students without considering their life experience of growing up black, Latino, or Native American, experiences that sociologists agree profoundly affect each individual's life in the United States, would overlook essential information and distort evaluation of other elements in an applicants' file. Considering race in an individualized manner focuses on race where it matters most, as an individual life experience.

No other factor can adequately capture this experience (Bowen and Rudenstine 2003). Although nonwhite students are more likely than white students to be poor, race matters among the poor as well as the middle class and the well off (Pattillo-McCoy 1999). Poor black and Latino families are more likely than white ones to encounter job and housing discrimination. A poor white child believes that she lives in substandard housing because of her family's income, not because of her race. A white teenager may be expelled from a store because of disruptive behavior, but not because of his race. Minority children know that race is a defining feature of their lives.

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[15] *Cf. Bakke,* 438 U.S. at 317 (Powell, J., announcing the judgment of the Court) ("an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant").

The inclusion of race among the life experiences that universities consider does not stigmatize students of color. Experimental research shows that affirmative action stigmatizes its beneficiaries only when people are selected entirely because of their race. When selection is based on a variety of factors including race, beneficiaries do not stigmatize themselves and are not stigmatized by others (Major *et al.* 1994). Instead, the psychological effects of affirmative action programs are predominantly positive (Taylor 1994:174). Nonwhite applicants are stigmatized in their childhood through exclusion from white neighborhoods, good schools, and playground cliques. Inclusion in university classes based partly on consideration of their race will not further stigmatize them.

Nor does affirmative action exacerbate racial divisions. Affirmative action brings people of different races together in ways that foster mutual understanding (Pettigrew 1998). A national sample of workers found that whites who worked for employers with affirmative action programs were more supportive of race-targeted interventions to create opportunities for blacks than were similar whites in firms without affirmative action programs (Taylor 1995:1406). It is segregation, not affirmative action, that perpetuates prejudice. With segregation of elementary and secondary schools on the rise, affirmative action programs at universities are the most narrowly tailored, moderate means of reversing our slide toward a society divided by race.

Some universities have experimented with other ways to take into account the impact of race on applicants' life experiences. A few seek applicants from impoverished socioeconomic backgrounds. Although nonwhite students are more likely to be poor than whites, in a predominantly

white society low income whites far outnumber low income minorities. As a result, such preferences do not enhance racial diversity on university campuses (Kane 1998:448-51). Other universities have adopted rules automatically admitting students who graduate in the top ten or twenty percent of their high school class. This approach ratifies, and may even perpetuate, the residential and educational segregation that divides America. At public colleges, the method has failed to achieve even the modest racial diversity universities attained when they could consider race among other life experiences, in part because adoption of these programs has discouraged some minority applicants from applying (Wierzbicki and Hirschman 2002; Tienda *et al.* 2003; Karabel 2003:35).[16]

Equally important, these approaches are blunt tools that aggregate all students with a particular characteristic. Under the first method, all students at a defined income level are treated alike, despite research that demonstrates that the experiences of blacks, Latinos, and Native Americans differ from that of whites at the same socioeconomic level. Under the second approach, the top graduates of high schools statewide are treated identically, even though those students will vary widely in the experiences and abilities they bring to college. Automatic admission of a percentage of graduates from every high school results in the admission of many students, both white and nonwhite, who would not have been chosen through a more careful, individualized examination of application files.

[16] In addition, this method cannot work at private colleges, public colleges that recruit nationally, or graduate and professional schools.

The most narrowly tailored means of achieving universities' compelling interest in selecting the students with the greatest potential is an individualized reading of application files that takes into account the impact of growing up nonwhite in America on other life experiences. Excluding race from consideration or substituting other, less focused methods would impair the ability of educational institutions to choose the best students and the most productive future leaders.

This individualized consideration of race fits naturally with the way in which universities incorporate other life experiences, characteristics, and skills into their admissions decisions. Among other factors, universities currently give substantial preferences to the children of alumni and applicants who will play on intercollegiate sports teams. In 1999, athletes recruited by one selective college were 48 percent more likely to be admitted than non-athletes. Children of alumni enjoyed a 25 percent advantage, while minority applicants were just 18 percent more likely than white candidates to be admitted (Shulman and Bowen 2001:40-41). In other words, athletic skills and legacy status may well have more impact on the weight selective colleges give test scores, high school grades, and other credentials than does the experience of growing up nonwhite, an experience that sociological research demonstrates transcends every other life experience.[17]

[17] Preferences for athletes and the children of alumni, moreover, benefit white applicants much more than minorities. At the University of Virginia in 2002, the 547 legacies offered admission included 497 whites and just 20 blacks (Howell and Turner 2003:Table 5). In 1989,

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Universities consider many life experiences in order to interpret applicants' grades and test scores accurately, create diverse classes that promote learning, and predict which applicants have the greatest potential to contribute to society. Race is not simply a characteristic that can be separated out in evaluating an applicant. Incorporating the experience of growing up black, Latino, or Native American into the assessment of individual applicants, as the University of Michigan does, is the most narrowly tailored, and the most accurate, means of considering each applicant as a whole person.[18]

Consideration of race by universities in this manner has a natural end: universities will no longer need to consider race in admissions when race no longer affects individual lives in the extensive way it does in the United States today. That day has not yet come for black, Latino, or Native American applicants.

only 13 percent of male athletes admitted to selective colleges, and 6 percent of female athletes, were black (Shulman and Bowen 2001:315, 335).

[18] The Court of Appeals for the Sixth Circuit found that Michigan's Law School had a "policy of evaluating each applicant individually," that "the Law School's officials read each application," and that the officials "factor all of the accompanying information [including race] into their decision." *Grutter v. Bollinger,* 288 F.3d 732, 746 (6th Cir. 2002). This approach is consistent both with the standard identified by Justice Powell in *Bakke* and with the social science rationales for affirmative action we outline here. Similarly, the District Court found that the college's current admissions system considers race in the context of other factors and reviews files individually. *Gratz v. Bollinger,* 122 F. Supp. 811, 827-31 (E.D. Mich. 2000).

IV. CONCLUSION

Higher education is our gateway to economic security, individual responsibility, professional achievement, and community leadership. But the roads to this gateway are not uniform. Some students travel from urban ghettos, while others arrive from gated communities. Some are the children of alumni; others are the first in their families to complete high school. Some have been accosted by shopkeepers and police because of their dark skin; others have been favored by teachers and employers because of their lighter color. Universities cannot ignore these differences when choosing students who will benefit from higher education, enrich that education for others, and contribute significantly to the community after graduation. The University of Michigan's consideration of race in its admissions systems, as a profound life experience that contextualizes other life experiences, is narrowly tailored to serve a compelling state interest. The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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